**IOWA DEPARTMENT OF NATURAL RESOURCES**
**ADMINISTRATIVE CONSENT ORDER**

| IN THE MATTER OF: | |
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| **G. Lee Pattison**<br>**Clayton County, Iowa** | ADMINISTRATIVE CONSENT ORDER<br>NO. 2010-AFO-37 |

TO: G. Lee Pattison
22127 Hwy 52
Garnavillo, Iowa 52049

## I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and G. Lee Pattison for the purpose of resolving water quality violations that resulted in a fish kill in Buck Creek and other water quality and animal feeding operation violations that occurred at Mr. Pattison's confinement facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**
Mike Wade, Field Office 1
Iowa Department of Natural Resources
909 West Main, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

**Relating to legal requirements:**
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

**Payment of penalty to:**
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

## II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapters 459 and 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

## III. STATEMENT OF FACTS

**JUNE 2009:**

1. On June 27, 2009, DNR Field Office 1 received a report of dead trout and other fish in Buck Creek Park, a Clayton County park located near Garnavillo. The report indicated the dead fish were seen on June 27, 2009 at approximately 7:00 am. It was later learned that another angler noted dead and dying fish in the park area on June 26, 2009 at approximately 2:00 pm.

2. On June 27, 2009, at approximately 10:45 am, Mike Wade, DNR Field Office 1 environmental specialist senior, began his investigation at the Buck Creek Park. He observed dead fish, including Rainbow Trout. From the park area, Mr. Wade walked upstream to the road crossing at 215th Street. A copy of a map with the investigation locations is attached as Attachment A. Mr. Wade observed dead fish along the way. He spoke to a landowner near the intersection of 220th Street who stated he noticed dead fish during the morning of June 26, 2009. Mr. Wade continued to note that the stream was impacted up to a hay field and an open animal feeding operation located at 21097 King Road. Mr. Wade checked all the tributaries between Buck Creek Park and the road crossing at 215th Street. He observed live aquatic invertebrates in the stream segments of the tributaries and no dead fish.

3. On June 28, 2009, Mr. Wade returned to the Buck Creek watershed to identify the source of the fish kill. Mr. Wade checked the stream substrates from the road crossing at Highway 52 downstream to the King Road Crossing and between the road crossing at Highway 52 and an abandoned farmstead located at 28004 205th Street. Along these portions of the stream, Mr. Wade observed live aquatic invertebrates and no dead fish. He also inspected an unnamed tributary that discharged to Buck Creek west of King Road and observed live aquatic invertebrates in that stream segment. Mr. Wade noted that runoff from an open cattle feeding operation located at 21097 King Road had discharged to Buck Creek. At the time of the visit, Mr. Wade was not able to contact anyone at the facility. Mr. Wade also noted that manure had recently been applied to a hay field near the intersection of King Road and 215th Street. Vegetation on the field was sparse and it appeared the field drained to the Buck Creek watershed.

4. On June 29, 2009, Mr. Wade met with Henry Mueller. Mr. Mueller indicated he owned the field where the manure had been applied as well as the open cattle feedlot structures located at 21097 King Road. He stated that he rents the field and the feedlot structures to Lee Pattison. Mr. Pattison feeds approximately 80-100 young Holstein heifers at the location. Mr. Wade informed Mr. Mueller that it appeared manure had run off the field recently. Mr. Mueller stated that the area had

received an inch of rain in a very short period on July 25, 2009. Mr. Wade also informed Mr. Mueller that manure was entering the stream from the feedlot.

5. On June 30, 2009, Mr. Wade met with Mr. Mueller and Mr. Pattison at the feedlot and discussed the fish kill investigation. Mr. Pattison indicated that he was the certified confinement site manure applicator responsible for the manure application on the field. He indicated that he applied 6,600 gallons of manure on approximately 75 acres of the hay field; this was done in accordance with his manure management plan. The manure originated from Mr. Pattison's cattle confinement feeding operation. He stated he applied the manure on June 24 and June 25, 2009. He confirmed that the area received heavy rain in a short period of time on July 25, 2009 at approximately 4:30 pm. Mr. Wade and Mr. Pattison walked around the feedlot and Mr. Wade showed Mr. Pattison areas of manure runoff from the facility. The southeast corner of the feedlot was a few feet from the stream bank and manure solids were observed on the vegetation down to Buck Creek. Mr. Wade also noted solids below the discharge point, but the majority of the solids had been washed down the stream. Mr. Pattison stated he thought there was a dirt berm around the feedlot, but Mr. Wade pointed out that there was no type of berm remaining around the feedlot. Mr. Pattison stated he would work with Mr. Mueller to modify the feedlot so there would be no runoff to the creek. Mr. Pattison indicated the manure was scraped from the feedlot at least weekly and stockpiled on site. The stockpile was located approximately 105 feet from Buck Creek.

6. Following the visit on June 30, 2009, Mr. Wade reviewed Mr. Pattison's file and manure management plan for Mr. Pattison's cattle confinement feeding operation located at 22127 Highway 52, Garnavillo. The file included a previous visit memo from June 24, 2009. The field office personnel on site observed Mr. Pattison applying manure to the hay field in question on June 24, 2009.

7. On July 17, 2009, DNR issued a Notice of Violation letter to Mr. Pattison for the water quality and animal feeding operation violations discovered during Mr. Wade's investigation in June 2009. The letter required that all discharges from the feedlot must stop immediately; the facility must apply for an NPDES permit; manure must be properly land applied; and the manure stock pile must be moved. Following the Notice of Violation letter, Mr. Pattison informed the field office that all of his cattle were being removed from the feedlot. On July 21, 2009, Mr. Pattison indicated that it would have been cost prohibitive to have cattle in the feedlot due to the improvements that were necessary. Mr. Pattison indicated the cattle would be removed within a few days.

8. The fish kill evaluation by DNR Fisheries concluded that 15,272 fish valued at $11,752.46 were killed. The cost of performing this assessment was $1,232.22. The lost recreational value was $3,205.00. The complete fish kill assessment totals $16,089.68

**DECEMBER 2009:**

9. On December 1, 2009, DNR Field Office 1 received a complaint regarding contaminated surface water in a field waterway where it crossed under King Road, northeast of Garnavillo. The waterway is an unnamed tributary of Buck Creek. The complainant stated the water smelled like sewage and that the aquatic vegetation looked blue. The complainant was uncertain of the source of the pollutants.

10. On December 2, 2009, Brian Jergenson, DNR Field Office 1 environmental specialist, traveled to the site of the complaint and located the waterway. Mr. Jergenson noted a foul smell coming from the water and observed a gray slimy growth on the water's vegetation. Mr. Jergenson followed the waterway approximately ½ miles upstream where it crossed under Highway 52 through a concrete culvert. The water had a foul smell and foamed as it exited the culvert. The field test of the water indicated an ammonia concentration greater than 3.0 ppm. The laboratory samples indicated the following: Total Suspended Solids (TSS) – 52 mg/L, Ammonia Nitrogen – 5.4 mg/L, and Chemical Oxygen Demand (COD) – 320 mg/L. Mr. Jergenson observed a liquid spill adjacent to the waterway at Mr. Pattison's confinement facility. The liquid was just south and down gradient of a large silage storage area. Mr. Jergenson met with Mr. Pattison at the facility and explained that he had walked the waterway and did not observe another source of the pollutant. Mr. Pattison stated that he had attempted to stop the seepage from the silage pile and that a berm had been constructed around the facility's silage storage area. The berm had recently been driven over, causing the leachate to migrate toward the waterway. Mr. Jergenson did not observe any other areas of runoff except for the silage area.

11. On December 9, 2009, Mr. Jergenson returned to the facility. Mr. Pattison had created a larger berm between the silage storage area and the waterway. He collected laboratory samples from upstream of the facility and at the King Road crossing. The laboratory samples from upstream of the facility indicated the following: TSS – 2 mg/L, Ammonia Nitrogen – less than 0.05 mg/L, and COD – 12 mg/L. The laboratory samples from the King Road crossing indicated the following: TSS – 10 mg/L, Ammonia Nitrogen – 2.5 mg/L, and COD – 65 mg/L.

12. On December 22, 2009, a Notice of Violation letter was issued to Mr. Pattison for the violations discovered during Mr. Jergenson's investigation. The violations included a prohibited discharge and general water quality violations.

**MARCH 2010:**

13. On March 10, 2010, Mr. Pattison contacted DNR Field Office 1 and reported a manure release from his confinement operation. Mr. Pattison stated that approximately 50,000 gallons of manure from the dairy confinement had been

discharged to a field drainage area and had entered an unnamed tributary of Buck Creek.

14. On March 10, 2010, Mr. Wade and Don Chase, DNR Field Office 1 environmental specialist, responded to the manure release. The field office personnel met with Mr. Pattison at the facility. A pipe had broken between the earthen basin and the confinement structure. The manure entered the concrete formed manure basin and the basin overflowed. The manure had overflowed the entire circumference of the concrete basin. Mr. Pattison had constructed a small berm in the waterway to block the flow created by snow melt runoff from adjacent fields. The field office personnel observed that the manure flow had breached the small berm and was discharging to the tributary through the waterway. This was the same tributary that was impacted during the December 2009 discharge. The field office personnel visited several areas on the tributary and the results are as follows.

a. Laboratory sample from the waterway at the facility indicated an ammonia concentration of 200 mg/L. The water contained manure solids and was stained brown. The water also had a manure odor. The field office personnel noted a significant flow from the snow melt at this location.

b. Downstream Crossing at King Road. The laboratory sample from this location indicated an ammonia concentration of 1.3 mg/L. The water appeared to be slightly brown, but did not have a manure odor.

c. Downstream Crossing at Jet Avenue. The water in this area appeared to be significantly stained brown and had a manure odor. The field office personnel determined that the slug from the manure release was just upstream of the confluence with Buck Creek. From the location, the field office personnel could observe Buck Creek flowing through Buck Creek County Park.

d. Buck Creek Park. The field office personnel were at the site at approximately 1:00 p.m. and the water was not discolored and did not have an odor. The laboratory sample indicated an ammonia concentration of 0.71 mg/L. At 2:35 p.m., the field office personnel returned to this location. The water was slightly brown, but did not have an odor. The water flow had increased significantly since the earlier stop at this location. The laboratory sample indicated an ammonia concentration of 4.4 mg/L.

The field office personnel returned to the facility and noted that there was a berm in place with a pump that appeared to be containing the runoff from the facility. Mr. Pattison was scraping the solids and was pumping the manure contaminated storm water to a field to prevent further discharges to the tributary.

15. On March 11, 2010, Mr. Chase and Mr. Wade returned to Buck Creek Park and collected a water sample from the same area as on March 10, 2010. The laboratory sample indicated an ammonia concentration of 0.63 mg/L. The field office personnel did not observe any dead fish in the area. But the water was very turbid and did not allow for a complete evaluation of aquatic damage. The field office personnel continued to Mr. Pattison's facility. The storm water runoff was being contained and the pumping station was still in place. Mr. Pattison stated that the broken piping had been repaired. The field office personnel noted that there was not two feet of freeboard in the earthen basin. Mr. Pattison stated he was having a difficult time with having sufficient storage capacity. The field office personnel recommended that Mr. Pattison install meters at his facility to determine what may be impacting the capacity. The field office personnel also noted that there was significant sloughing of the earthen basin walls. The field office personnel recommended that manure levels remain below the concrete poured walls to prevent sloughing. The field office personnel also spoke to Mr. Pattison about the compost pile and storage of bedding material coming into contact with storm water. Mr. Pattison stated he was planning to move the pile and the storage area.

16. On April 23, 2010, Mr. Wade, along with other DNR personnel, returned to Mr. Pattison's facility. The compost pile and storage area had been moved. Mr. Pattison informed the DNR personnel that he had increased the number of manure applications as well as the method of manure application to prevent future discharges. The earthen basin did not have two feet of freeboard. The DNR personnel informed Mr. Pattison that he must keep the manure level down until an engineer could evaluate the basin.

17. On May 11, 2010, a Notice of Violation letter was issued to Mr. Pattison for the violations discovered during the March 2010 investigation. The letter included the following violations: failure to maintain the minimum level of manure control for a confinement operation, failure to maintain required freeboard levels, and general water quality violations.

18. On May 19, 2010, DNR Field Office 1 sent Mr. Pattison a follow-up letter providing several recommendations for the improvement of the facility.

## IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. In June 2009, DNR Field Office 1

observed that manure from the feedlot had also entered Buck Creek. In December 2009, DNR Field Office 1 observed silage runoff from Mr. Pattison's confinement operation entering a tributary to Buck Creek. In March 2010, DNR observed manure from Mr. Pattison's confinement operation entering a tributary to Buck Creek. The above-facts indicate violations of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. In June 2009, DNR noted a large fish kill in Buck Creek as a result of a manure discharge at Mr. Pattison's open lot. In December 2009, DNR observed foam, an odor, and elevated pollutants in a waterway as a result of a silage discharge at Mr. Pattison's facility. In March 2010, DNR observed discoloration, a manure odor, and elevated pollutants in a tributary of Buck Creek as a result of a manure discharge at Mr. Pattison's facility. The above-facts disclose violations of one or more of these criteria.

4. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. In June 2009, manure runoff from the application field resulted in water quality violations. The manure had come from Mr. Pattison's animal confinement operation. The above-mentioned facts indicate a violation of this provision.

5. 567 IAC 65.101(1) states that all settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state. In June 2009, DNR noted manure solids from the Pattison feedlot on banks of and in Buck Creek. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.101(8)"b" states that all stockpiles of manure scraped from open feedlots shall not be located within 200 feet from a designated area, defined as known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or other water source. Buck Creek is a designated area. In June 2009, Mr. Pattison's manure stockpile was approximately 108 feet from Buck Creek. The above-mentioned facts indicate a violation of this provision.

7. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state. In March 2010, DNR documented a manure discharge from Mr. Pattison's confinement facility that reached a water of the state. The above-mentioned facts indicate a violation of this provision.

8. 567 IAC 65.2(3)"b" states that manure stored in unroofed formed manure storage structures shall be removed from the structures as necessary to maintain a minimum one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. The provision furthers states that manure stored in unformed manure storage structures or earthen waste slurry storage basins shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. During the March 2010 DNR inspection it was documented that manure overflowed the concrete manure basin; therefore there as a failure to maintain one foot of freeboard in this structure. Additionally, during the March 2010 DNR inspection it was documented that two feet of freeboard was not being maintained in the unformed earthen basin. The above-mentioned facts indicate violations of these provisions.

9. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution, the value of lost services to the public, and the cost of the investigation. In June 2009, a fish kill resulted from the manure discharge from Mr. Pattison's feedlot and from Mr. Pattison's manure application to the hay field.

## V. ORDER

THEREFORE, the DNR orders and Mr. Pattison agrees to do the following:

1. Mr. Pattison shall prevent future discharges of manure to waters of the state;

2. Mr. Pattison shall maintain four to five feet of freeboard in the open feedlot runoff control earthen basin until a professional engineer evaluates the basin and the engineer evaluation is approved by DNR Field Office 1;

3. Mr. Pattison shall not fill the confinement earthen basin above the concrete liner until a professional engineer evaluates the basin and the engineer evaluation is approved by DNR Field Office 1:

4. Mr. Pattison shall install a meter on the well water used at the facility within 30 days of the date the Director signs this administrative consent order. The water usage information should be submitted to DNR Field

Office 1 after the first 30 days to determine if the facility needs a water use permit; and

5. Mr. Pattison shall pay an administrative penalty of $5,000.00 and fish restitution in the amount of $16,089.68 for a total of $21,089.68 in accordance with the following payment plan. If any of the payments are not made in accordance with the plan, the remaining portion of the payments shall be due immediately. The payments shall satisfy the administrative penalty first, with the remaining payments satisfying the restitution.

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| $964.68 due June 15, 2010; | $875.00 due June 15, 2011; |
| $875.00 due July 15, 2010; | $875.00 due July 15, 2011; |
| $875.00 due August 15, 2010; | $875.00 due August 15, 2011; |
| $875.00 due September 15, 2010; | $875.00 due September 15, 2011; |
| $875.00 due October 15, 2010; | $875.00 due October 15, 2011; |
| $875.00 due November 15, 2010; | $875.00 due November 15, 2011; |
| $875.00 due December 15, 2010; | $875.00 due December 15, 2011; |
| $875.00 due January 15, 2011; | $875.00 due January 15, 2012; |
| $875.00 due February 15, 2011; | $875.00 due February 15, 2012; |
| $875.00 due March 15, 2011; | $875.00 due March 15, 2012; |
| $875.00 due April 15, 2011; | $875.00 due April 15, 2012; |
| $875.00 due May 15, 2011; | $875.00 due May 15, 2012. |

## VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of $5,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Pattison gained an economic benefit by not installing proper manure controls on the feedlot. He was able to avoid the cost of proper manure controls. Additional cost savings occurred at Mr. Pattison's confinement facility. He has been able to avoid the cost of increasing the storage capacity at the

confinement facility. A conservative estimate of the economic benefit is $1,000.00 and that amount is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. In June 2009, the failure of Mr. Pattison to contain the manure from the feedlot and the field led to manure discharges into Buck Creek and resulted in water quality violations. The manure discharges also caused a substantial fish kill. In December 2009, Mr. Pattison's failure to contain the silage seepage from his facility also resulted in water quality violations. And in March 2010, the failure to contain all manure from Mr. Pattison's confinement facility resulted in additional water quality violations. Failure to comply with the manure control requirements threatens the integrity of the water quality program. Additionally, DNR Field Office 1 has expended a large amount of time in working with Mr. Pattison in improving and ensuring further compliance with the regulations. Therefore, $3,000.00 is assessed for this factor.

Culpability – Mr. Pattison has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, $1,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Pattison. For that reason Mr. Pattison waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 1 day of July, 2010.

G. Lee Pattison

Dated this 22 day of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: G. LEE PATTISON

G. Lee Pattison June, 2010.

Kelli Book, Field Office 1, EPA, VIII.D.1.b, VIII.D.3